IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9375 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESHBHAI RATILAL SHAH

Versus

GUJARAT UNIVERSITY

Appearance:

1. Special Civil Application No. 9375 of 2004

MR KETAN D SHAH for Petitioner No. 1

MRS VIBHUTI NANAVATI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 02/08/2004

ORAL JUDGEMENT

1.0 Rule. Mrs.V D Nanavati learned advocate waives service of Rule on behalf of the respondent. With the consent of the learned advocates for the parties the

matter is taken up for hearing today.

2.0 The petitioner herein has challenged the Order Below Exh.16 dated 31/03/04 passed by the Auxiliary Chamber Judge, City Civil Court, Ahmedabad at Annexure `A' to the petition.

3.0 Mr.K D Shah learned advocate for the petitioner has relied upon Para 3 & 4 of the Order Below Exh.16 which reads as under;

"3. I have heard both the learned advocates at length and have given my serious consideration to their rival submissions. Hence, in this application it is specifically admitted by the defendant that on 17/04/03 his stage to file leave to defend was closed and by rejection of application that stage was declared to be closed. In my opinion, in event of failure to file leave to defend, the only option that is left with the Court is to decree the suit. In this particular matter, after perusing and ascertaining the fact that the stage for L.D. is closed has moved exh.17 at 20-1-04 to obtain ex-parte decree. Not only that but plaintiff has given one another application at exh.22, in order to know that in defendant university from 17-2-02 to 08-1-04 who and how many officers are transferred so that the Court can satisfy itself whether there is any truth in the ground that L.D. could not be filed due to transfer of the officers."

"4. On consideration of the aforesaid facts, his right to leave to defend is closed. Astonishing the fact is that though application for revival of right is given, it is neither supported by any affidavit of officer of the university nor does any delay condonation application is given to explain how the delay is occurred. It is also unfortunate ground that the officers of university were transferred though it is given not substantiated. It is noteworthy that plaintiff has given exh.22 to disclose the names of those officers who are said to have been transferred. Unfortunately, the defendant till date, the defendant has not submitted a single name of the officers nor does give any reason for non-disclosing of the names. In my view, when defendant comes with clear ground that due to transfer of the officers, he could not submit L.D., it ought to have submitted such names or to

comply exh.22."

In spite of that the learned Auxiliary Chamber Judge has wrongly allowed the Order Below Exh.16.

4.0 In my opinion, in view of the order passed in Special Civil Appl. No.6269/2004 preferred by the original defendant, I think the contention raised by the petitioner in this petition is misconceived. The order passed by the learned Judge reviving the Leave to Defend Application is just and proper to the extent that the defendant shall pay Rs.10,000/- (Rupees Ten thousand only) as cost to the plaintiff instead of Rs.20,000/-. Therefore, no interference is called for in this petition. Hence it is dismissed. Rule discharged with no orders as to costs.

(K. S. Jhaveri, J.)

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